

Is Government Supererogation Possible?

Justin Weinberg

Department of Philosophy, University of South Carolina

jweinberg@sc.edu

Draft - October 14, 2008

§1. Introduction

Justice is the primary norm of government, but governments frequently take actions which are required by no plausible theory of justice. Some of these actions are not required by justice because they are unjust. Yet there are other non-required government actions which are not thought to be unjust; instead they are thought to be morally good. Examples of such actions may be controversial, since accounts of which acts might commendably go beyond what justice requires will vary according to which theories of justice and goodness we accept, and there is disagreement over these theories. Nonetheless, I offer here a few possibly noncontroversial candidates for such actions (if you disagree with these examples, it should not be hard to find others you think more suitable):

- Celebrations. The government throws a “block party,” providing extra security, traffic redirection, and entertainment subsidies.
- Grants. The government awards money to individuals engaged in projects such as poetry writing or historical research.
- Historic Preservation. The government requires homes in a neighborhood to conform to historic architectural standards, increasing property values there.

In each of these cases, we typically take the government to be doing something good, but not required by the norms of justice that apply to it. Acts which an agent is not required to perform, but would be good if performed, are supererogatory. Insofar as governments perform the kinds of acts listed above, and relevantly similar ones, it appears that they perform supererogatory acts.

As we’ll see, because of the kind of agent government is, there are reasons to ask whether it is possible for government to perform supererogatory acts. This question, I argue, leads to a dilemma. If its answer is No, then, contrary to what most people believe, when governments perform these kinds of acts they are acting either in ways justice prohibits or, less plausibly, in

ways justice requires. If its answer is Yes, then, I argue, common views about justice, government, and coercion require revision.

Before delving into the question, let me say a few words about why it is worth answering. It might seem strange to focus on possible government supererogation, given the kinds of examples I've used to illustrate it. Why should political philosophers worry about block parties and poetry grants while unjust wars rage or innocent children starve? Let me offer the following. First, while the kinds of acts that make for possible examples of government supererogation may each appear morally insignificant, when taken together they involve large amounts of human effort and expenditures.¹ The opportunity costs of these acts may be tremendous, and learning about their moral status may eventually help us figure out whether they are worth it. Second, the topic of government supererogation raises important conceptual questions about the relation of political justice to the rest of morality, as well as normative questions about the justification of coercion—two areas of concern central to political philosophy. So I think the topic of the paper may be of interest even to those who do not have an antecedent interest in supererogation

Here is the plan of the paper: in Sections 2,3, and 4, I identify three key ideas that play a role in the paper as a whole: supererogation, government, and justice. In Section 5 I introduce a basic version of the argument against government supererogation, which comes in two parts. Section 6 contains a revised version of the argument in light of an initial objection. In Sections 7 and 8 I consider two objections to the first part of the argument. I then clarify the dilemma the argument poses in Section 9. In Sections 10 and 11, I consider two objections to the second part of the argument. Appeals to specification and procedural justice are addressed in Sections 12 and 13, before matters conclude in Section 14.

§2. Supererogation

Supererogatory acts are good acts which, by definition, no agent is morally required to perform. They are said to go “above and beyond” what is required, and as such are optional. There is some dispute over supererogation. Ordinary morality makes use of the idea to describe the acts

¹ Ignoring small effects is one kind of “mistake in moral mathematics.” See Derek Parfit, *Reasons and Persons* (Oxford: Oxford University Press, 1984), p.75.

of heroes and saints,² among others, yet some philosophers have argued that to act supererogatorily is to act contrary to reason.³ Others, moved by consequentialist thinking, deny that there are supererogatory acts; if agents are required to bring about the most good, there is no room for nonrequired good-production.⁴ In this paper I leave aside these worries about supererogation. That is, I assume that the concept makes sense, it may sometimes be reasonable to act supererogatorily, and that whatever moral theory we have most reason to accept leaves room for good but nonrequired acts. What I want to know is whether governments can perform such acts.

§3. Government: Coercive and Justice-Bound

Two features of government are relevant here. The first is that governments are coercive.⁵ That is, its commands are enforced either in a way that forces compliance, or with the effective threat or deployment of harm towards potential and actual dissenters. A government uses coercion when, for example, it uses fines or imprisonment to deter people from, or punish people for, violating laws, failing to pay taxes, or ignoring officials' orders. The second is that for the employment of government coercion to be acceptable such coercion must be grounded on considerations of justice. As Kant puts it, "right [a word Kant uses for justice] and authorization to use coercion... mean one and the same thing."⁶ One way of putting this is to say that a proper government is a *justice-bound agent*, or JBA. As a JBA, a government may act coercively only when doing so is just.

² J.O. Urmson, "Saints and Heroes," in *Essays in Moral Philosophy*, ed. A.I. Meldon (Seattle: University of Washington Press, 1958). For an in depth discussion of supererogation, see David Heyd, *Supererogation: Its status in ethical theory* (Cambridge: Cambridge University Press, 1982).

³ For a more recent dispute about this see Douglas Portmore, "Position-Relative Consequentialism, Agent-Centered Options, and Supererogation," *Ethics* 113(2): 303-332 (2003) and B.C. Postow, "Supererogation Again," *The Journal of Value Inquiry* 39: 245-253 (2006).

⁴ See, for example, Shelly Kagan, *The Limits of Morality* (Oxford: Oxford University Press, 1989).

⁵ Are governments *necessarily* coercive? For a discussion see Christopher W. Morris, "Are States Necessarily Coercive?" (unpublished). The answer does not matter for the purposes of this paper, since governments are actually coercive, and I am interested in the justifiability of some of these forms of actual coercion. None of this is to say that coercion is the only way to ensure compliance.

⁶ Immanuel Kant, "Metaphysical First Principles of the Doctrine of Right" in *The Metaphysics of Morals*, trans. Mary Gregor (Cambridge: Cambridge University Press, 1991), p.58.

§4. Occasional and Perpetual JBAs

Justice is not optional—it does not recommend or suggest; it requires. Exactly what it requires is a matter of dispute. So is the matter of who the requirements bind, or who is a JBA. There may be a broad understanding of “justice” according to which all agents are always JBAs. But there is a more circumscribed understanding of justice, *political* justice, which refers to the rules that govern our collective existence as a polity.⁷ It is this species of justice that concerns me in this paper, and is what I refer to when speaking of being bound by justice. On this understanding of justice, it may be that only some agents are bound by justice, and that some such agents may be justice-bound only part of the time. Ruling in a courtroom, a judge is a JBA; rooting courtside at a basketball game, she is not—at least not in the same way she is while judging. In her role as judge, there are certain procedures and principles that justice demands must guide her actions; she is required to act in a certain way, for example, impartially.⁸ In her role as basketball fan, these same set of requirements do not apply. The judge, then, is an occasional JBA. By contrast, government is generally thought to be a *perpetual* JBA; justice always applies to it. It is never “off duty.”

§5. The Basic Argument against Governmental Supererogation

I’ll now introduce the *Basic Argument* against the possibility of governmental supererogation. It has two parts. In the first, I note that for governments, a necessary component of acting supererogatorily is acting in a way not required by justice. It is then argued that government ought not act in a way not required by justice. Hence, government ought not perform (alleged) supererogatory acts (or, perhaps more clearly, a government ought not perform acts that would be supererogatory if performed by some non-JBA). In the second part, it is argued on the basis of both this normative claim and a feature of supererogation that it is impossible for a government to act supererogatorily. (In brief, and with some fudging, we could say we have a case of “oughtn’t implies can’t”.)

⁷ Distributive justice falls within political justice. For discussion of who is bound by the requirements of distributive justice, see, for example, G.A. Cohen, “Where the Action Is: On the Site of Distributive Justice,” *Philosophy and Public Affairs* 26(1): 3-30 (1997), Liam Murphy, “Institutions and the Demands of Justice,” *Philosophy & Public Affairs* 27(4): 251-91 (1998), and Thomas Pogge “On the Site of Distributive Justice: Reflections on Cohen and Murphy.” *Philosophy and Public Affairs* 29(2): 137-69 (2000).

⁸ In this paper I am ignoring “legal realist” challenges to claims like this.

First Part of the Basic Argument:

1. When an agent performs a supererogatory act, the agent is acting in a morally significant way⁹ that it is not required by justice.¹⁰
2. Government is a perpetual justice-bound agent, or JBA.
3. A perpetual JBA ought never to act in ways not required by justice.¹¹
4. Government ought never to act in ways not required by justice. (2,3)
5. Therefore, government ought never to perform a supererogatory act. (1,4)

Second Part of the Basic Argument:

6. When an agent does what it ought not to do, it acts wrongly.
7. Were government to perform an act not required by justice, it would thereby be acting wrongly. (4,6)
8. An agent who is performing a supererogatory act is not acting wrongly. (This follows from the definition of a supererogatory act.)
9. Therefore, the government's performance of an act not required by justice would not be supererogatory. (7,8)

If the first part of the Basic Argument is correct, governments should not act in ways that have usually been thought to be supererogatory, such as to provide for things like celebrations, issue grants, and mandate historic preservation. This would be surprising, as many people believe that not only should governments be able to provide for these things but that it is or would be very good of them to do so. According to the second part of the Basic Argument, were the government to so act it would not be acting supererogatorily; so it seems that government supererogation is not possible. Should we accept the Basic Argument?

§6. The Requirement Thesis and the No-Conflict Thesis

Premise 3 of the Basic Argument says that to be a perpetual JBA is to never act in a way not required by justice. Let us call this the *requirement thesis*.

⁹ Throughout this argument, whenever I talk about an agent acting in a way not required by justice, I mean a morally significant way. This is because there are a host of morally insignificant acts not required by justice that are irrelevant to the argument here, such as scratching one's nose or writing with one pen rather than another.

¹⁰ This is not a definition of a supererogatory act, but simply one necessary feature of such an act.

¹¹ This premise is defended further in the next section.

It may be thought that the requirement thesis is too strict. Rather than hold that a perpetual JBA must never act in a way not required by justice, we could subscribe to a looser idea, which we can call the *no-conflict thesis*, that a perpetual JBA must never act in a way that conflicts with justice. On the no-conflict thesis, it becomes acceptable for governments to perform acts not required by justice, so long as these acts do not conflict with justice. Let us see what the first part of the Basic Argument would look like if we replaced its requirement thesis with the no-conflict thesis.

First Part of the Basic Argument, “no-conflict” version:

1. When an agent performs a supererogatory act, the agent is acting in a morally significant way that it is not required by justice.
2. Government is a perpetual JBA.
3. A perpetual JBA ought never to act in ways that conflict with justice.
4. Government ought never to act in ways that conflict with justice. (2,3)

Since it seems one may act in a way that is not required by justice without necessarily acting in a way that *conflicts* with justice, the revised argument appears unable to reach the conclusion set out in the initial version of the first part of the Basic Argument, namely, that government ought never to perform a supererogatory act.

But this may be too quick. Is it possible to act in ways not required by justice without thereby acting in ways that *conflict* with justice? For ordinary agents—non-JBAs—the answer is *yes*. This is true even of occasional JBAs, such as our judge, when off-duty. She is not required by justice to attend basketball games, nor does her attendance at basketball games (during leisure time) conflict with justice. Justice permits her attendance.

However, both perpetual JBAs and occasional JBAs acting in their official capacities are different from other agents. To see this, let’s look at the judge when she is on duty and check on some kinds of acts that are generally thought to be permitted but not required, kinds of acts that are typically thought to be supererogatory. Showing mercy is one such act. Suppose the judge were to take mercy on a convicted criminal by giving him a shorter sentence than justice requires. In doing so, she would be failing to give the criminal the punishment he deserves, which would be unjust.¹² Providing more help than one is required to is another common

¹² Some might say “noncomparatively” unjust. Justice generally involves people getting what they are due. In cases of comparative justice, what one is due depends on what others get. In cases of noncomparative justice, what one is

example of a supererogatory act. Were the judge to benefit a particular defendant by allowing a helpful but usually excluded type of evidence to be admitted into the proceedings, that would constitute special treatment unavailable to other defendants and thus also be unjust.¹³

We can bring in the Second Part of the Basic Argument here. Injustice is a species of wrongness. As Premise 8 of the Basic Argument reminds us, acts which are wrong to perform cannot be supererogatory. We've seen in the above cases that were the judge to show mercy or give special help, that would be unjust, and hence wrong, and thus not supererogatory.

Now consider the examples of potential government supererogation: block parties, grants, and historic preservation. We need to pay attention to what is involved in the provision of these goods. They require funding, which is collected from subjects of the government, and they include administration, which involves the government effectively telling subjects what to do. These are exercises of the coercive power of government. If this coercion is performed in support of acts that are supererogatory, then, since supererogatory acts are not required by justice, this coercion is not required for justice. Traditionally, government coercion is justified only on the basis that it is necessary for justice, whatever justice is. If we accept this, then the coercion involved in providing for block parties, grants, and historic preservation, etc., is unjustified. Even if it would be supererogatory for some non-JBA to provide for these goods, on this argument it is wrong, and thus unjust, for government to do so. At this point we can apply the Second Part of the Basic Argument: unjustified coercion is wrong, and since wrong acts cannot be supererogatory acts, were government to act to provide for these goods it would not be acting supererogatorily.

If we can generalize from these examples, we see that justice is a target; attempts to go above and beyond justice miss it as much as attempts that fall short of it. Thus, in the Revised First Part of the Basic Argument, despite having changed the words of Premise 3 from "not required by" to "not in conflict with," we have not changed its content. We can make this explicit with a

due does not depend on what others get. See Joel Feinberg, "Noncomparative Justice," *The Philosophical Review* 83(3): 297-338 (1974). For critical appraisals of Feinberg see Phillip Montague, "Comparative and Non-comparative Justice," *The Philosophical Quarterly* 30(119): 131-140 (1980) and Joshua Hoffman, "A New Theory of Comparative and Noncomparative Justice," *Philosophical Studies* 70: 165-183 (1993).

¹³ This would be an example of "comparative injustice" (see previous note). Heyd writes, "Favouritism and partiality are wrong within the boundaries of justice, but should be immune from criticism in the realm of supererogation." Heyd, "Ethical Universalism, Justice, and Favouritism," *Australasian Journal of Philosophy* 56(1): 25-31 (1978).

further revision, which we can call the *Revised Argument*, in which Premise 4.1 states the point just argued for:

First Part of the Revised Argument

1. When an agent performs a supererogatory act, the agent is acting in a way that it is not required by justice.
2. Government is a perpetual JBA.
3. A perpetual JBA ought never to act in ways that conflict with justice.
4. Government ought never to act in ways that conflict with justice. (2, 3)
 - 4.1 When a JBA qua JBA acts in ways not required by justice, it acts in ways that conflict with justice.
 - 4.2 When government acts in ways not required by justice, it always acts in ways that conflict with justice (2, 4.1)
 - 4.3 Government ought never to act in ways not required by justice. (4, 4.2)
5. Therefore, government ought never to perform a supererogatory act. (1, 4.3)

And just for convenience, here is the *Second Part*:

6. When an agent does what it ought not to do, it acts wrongly.
7. Were government to perform an act not required by justice, it would thereby be acting wrongly. (4.3, 6)
8. An agent who is performing a supererogatory act is not acting wrongly. (This follows from the definition of a supererogatory act.)
9. Therefore, the government's performance of an act not required by justice would not be supererogatory. (7, 8)

§7. Non-coercive government

Let us again look at the judge. In her role as a private citizen, she may make a donation to a legal aid organization, or extend great effort voluntarily building houses for the poor. Unlike the examples with the government, nothing undercuts the supererogatory nature of these acts. Why not? First, unlike the government, there are times when the judge need not act as a JBA. Second, when she is not acting as a JBA, she acts in a non-coercive manner. So, non-coercive agents outside of their roles as JBAs can perform supererogatory acts.

Could the government ever be such an agent? Let's look at non-coerciveness first. For a government to act non-coercively and supererogatorily, it would have to perform some morally positive but not required act under certain conditions. First, its obligations of justice would have to be satisfied, so in virtue of acting in an otherwise supererogatory way it is not failing in its duties toward others. Second, the act would have to be funded voluntarily, rather than coercively. Third, cooperation with the act would have to be optional, rather than coerced. This is in principle possible. It is the model of government as voluntary association. Were government to act under these conditions, then it would be at least in principle possible for it to act supererogatorily. But this model does not depict how governments actually perform the kinds of acts that are typical candidates for supererogation, nor is it clear how, without coercion, governments would be able to achieve the aims they set out to with these kinds of acts. It does, however, suggest that voluntary associations may be appropriate agents for the kinds of acts in question.

§8. The Perpetuality Thesis

Premise 2 of the Revised Argument asserts what we can call the *perpetuality thesis*, that government is always a justice-bound agent. As we saw in the previous section, one possible way to argue that the government's acts could be more like the off-duty judge's, and thus actually supererogatory, is to suggest that government may act in a way that is not coercive. But another way is to challenge the perpetuality thesis. If government is not always a justice-bound agent, then in principle the coercive power of government could be properly deployed for reasons other than that justice requires it, in which case the Revised Argument would fail.

There are certain contexts in which we may already believe there are exceptions to the perpetuality thesis. In *emergencies*, the normal, justice-based constraints on government coercion may be relaxed. The same is sometimes argued in respect to *international* contexts, in which governments are interacting with non-subjects. However, the kinds of acts floated earlier as candidates for government supererogation do not fit into these exceptions. For a rejection of the perpetuality thesis to be relevant to these kinds of acts, it must say that in *non-emergency* cases governments may legitimately coerce *their own subjects*, even when doing so is not required by justice.

Government has a *coordinative* function which is thought to license coercion of its own subjects in non-emergency cases, such as traffic rules that tell us to drive on the right side of the road. Does coordination provide an exception to the perpetuality thesis? No, for two reasons. First, on most plausible theories of justice, coordination is required, or is a means to required ends. At the most basic level, theories of justice stand opposed to the view that “might makes right.” A government’s coordinating activities fall within its just aim of making sure that in contexts in which might is not supposed to make right, it doesn’t. For example, to leave traffic uncoordinated would be to allow right of way to be determined by who has the most intimidating automobile, or most guts, or least regard for others (and so on)—certainly not criteria by which to arrange the benefits or burdens of social goods like roads. Second, the coordinative activities themselves must be just. Bribes and favoritism in the administration of all government activities are deviations from justice, and coordinative activities are no exception. So both in its assignment of a coordinative function and the means by which it is carried out, government remains a JBA, and the perpetuality thesis remains in place.

Rejecting the perpetuality thesis would be a repudiation of much thinking about justice. Political philosophers, such as Rawls, have considered the point of theories of justice to delimit the proper scope of government coercion.¹⁴ “Justice” has often been used to distinguish that part of morality which may coercively be enforced.¹⁵ If we reject the perpetuality thesis, we would need a new way to conceive of the subject matter of justice. And more importantly, we would need an account of what, if not justice, sets limits to the exercise of government coercion.

§9. A Dilemma

At this stage, then, we are faced with a dilemma. We can accept the first part of the Revised Argument, which states that governments ought not to perform various acts they do in fact perform, acts that would be supererogatory if performed by non-JBAs. If we accept the first part of the Basic Argument, then many government actions—actions which are thought by most people to not only be permissible but praiseworthy—are in fact wrong. Alternatively, we can reject the first part of the Basic Argument. As we saw, this can be done either by rejecting

¹⁴ Rawls takes his theory to be answering the question, “in light of... what kind of conception of justice... can citizens legitimately exercise... coercive power over one another?” See Rawls, *Justice as Fairness* (Cambridge, MA: Harvard University Press, 2001), p.41.

¹⁵ For example, John Stuart Mill, *Utilitarianism* (Indianapolis: Hackett, 2001), p.48.

government coercion or rejecting the perpetuality thesis. If we reject government coercion, then it is not clear that government would be able to perform the kinds of acts in question. If we reject the perpetuality thesis, we reject the idea that normal government coercion is justified only on the basis of justice. This contradicts quite a bit of thinking about government, coercion, and justice. It also leaves us the tasks of reconfiguring the relationships between morality and justice, and justice and coercion.

§10. Injustice and Wrongness

The argument against the possibility of government supererogation comes in two parts: an argument to show the wrongness of government as a perpetual JBA acting in ways that are not required by justice, and an argument that a wrong act cannot be a supererogatory act. Up to this point I have mostly discussed the first part of the argument. But there are some questions that arise for the second part, which I discuss here and in the following section. (If you have no objections to the second part of the Revised Argument, you may wish to skip these two sections).

Premise 7 says that were government to perform an act not required by justice, it would thereby be acting wrongly. Injustice is indeed a species of wrongness. However, it may be alleged that an act that is unjust is not all-things-considered wrong. If the injustice of an act does not imply that it is all-things-considered wrong, then Premise 7 would have to be rejected or revised.

I can only briefly discuss this issue. We can ask in relation to the unjust acts of JBAs whether their injustice implies they are all-things-considered wrong. It may appear that to make progress here we need to know what theory of morality is informing our conception of wrongness. We could imagine a pluralist theory of morality according to which rightness is a function of many aspects of the act, including its justice and its utility (with the former defined independently of the latter), and according to which an unjust act may nonetheless be right if it produces sufficient utility.¹⁶ On such a theory the injustice of an act does not necessarily render it wrong. Does this finding overturn Premise 7? I don't think so. The reason is that Premise 7 is not a general claim about injustice and wrongness, but a claim specifically about JBAs, agents who are required to act justly. The pluralist theory entertained here does not require *any* agents to act justly, provided their acts generate enough utility. In other words, the theory is

¹⁶ Ross's view could be construed this way, though he is not working with a political conception of justice.

incompatible with the idea of a JBA. It therefore cannot tell us whether a JBA would still be acting rightly when it acts unjustly. Instead we would need a theory that says that agents may rightly deviate from their primary moral duties in order to act all-things-considered rightly. That is, JBAs may cease to be bound by justice if doing so is necessary for rightness. I do not know who holds this view. In any event, this view is incompatible with the idea of a perpetual JBA.

If we are attracted to such pluralist views, we might take its incompatibility with the idea of a JBA (perpetual or not) as a reason to reject the idea of a JBA. But an alternative would be to recognize that a JBA is an atypical kind of agent which falls outside the scope of standard moral theories. This was Rawls's position: the normative principles that apply to the interactions of individuals are not identical to the normative principles that apply to activities and structuring of political institutions.¹⁷ Rawls's theory of justice was offered as an account for some JBAs, not all agents. If we accept this division, then the inability of a moral theory to accommodate JBAs would not render that theory defective for the purposes of assessing typical moral agents. Nor would our insistence that some agents are JBAs imply that a pluralist moral theory like the one discussed here is false.

We may think that ultimately we would expect government to be an agent whose acts are assessed on both grounds of justice and beneficence. That is, we would not want justice pursued at all costs. There are two ways to take this. On one version, we just build some considerations of beneficence into our conception of justice and presto, a JBA is assessed on grounds of beneficence as specified in the theory of justice governing it.¹⁸ On the other version, we have a view of beneficence as being an external constraint on the pursuit of justice. If pursuing justice would lead to hell or high water—some kind of emergency—then the beneficence constraint kicks in. In Section 8 I noted that we accept that governments may be thought to appropriately deviate from justice in some emergencies.¹⁹ But noting this is of no help here, since the kinds of

¹⁷ See, for example, John Rawls, *A Theory of Justice*, rev.ed. (Cambridge, MA: Harvard University Press, 1999), p.7 and Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA: Harvard University Press, 2001) p.10. For critical discussion of this division, see the works listed at footnote 7.

¹⁸ On a related note, it might be thought that communitarianism provides a political theory that rejects the view that government coercion is legitimate only if grounded on justice. On this way of thinking, promotion of the community's good is grounds enough for coercion. Yet I think communitarians take this "presto" approach, instead. That is, they build the promotion of the community's good into their conception of justice, hence we get "communitarian theories of justice".

¹⁹ For an interesting discussion of this, see Tom Sorell, "Morality and Emergency," *Proceedings of the Aristotelian Society*, 103(1): 21-37 (2002).

acts under discussion as candidate supererogatory acts are not acts the omission of which would bring about (or fail to prevent) emergencies.

§11. The Moral Purity of Supererogatory Acts

The discussion in the previous section is too brief to be conclusive, so I must consider a further challenge to the argument. If the injustice of an act does not imply all-things-considered wrongness, then another issue arises. This concerns what we can call the *moral purity* of the supererogatory act. Premise 8 says that an agent who is performing a supererogatory act cannot be acting wrongly. But this assumes that for an act to be supererogatory it must be morally pure, that is, that the supererogatory act could not be in one way wrong, even if it is all-things-considered right. To put it another way, the assumption is that going “above and beyond” entails having successfully traversed “below and within.” One could challenge this assumption.

One way to challenge this assumption would be to note that the agents of supererogatory acts are themselves not necessarily pure. As Lawrence Blum has noted, Oskar Schindler, by many accounts a moral hero who saved many Jews from the Nazis, was far from morally pure.²⁰ He has been described as a libertine and adulterer who lacked concern for the feelings of others. It has been inferred from his great capacity for deception that he was not particularly “devoted to truthfulness.” His heroic activities seem to have been motivated, at least initially, by egoistic concern with wealth and adventure.²¹

Yet we cannot learn from the poor character of an agent who performs supererogatory acts whether the acts themselves were in some (overwhelmed) way wrong; we need to look at the acts themselves. So let us identify some supererogatory acts that involve elements that sometimes have been thought to be wrong. We can then see whether these elements retain their wrongness. One action of Schindler’s was to lie to the Nazis about whether any of his employees were Jewish. In at least some cases, Schindler lied in order to protect his employees from extermination. His lying was dangerous: were it discovered, his property and business would have been confiscated and he would likely have been killed. His lying has often been cited as an example of supererogation. Yet lying is often thought to be wrong. Were these lies of Schindler’s both supererogatory and in one way wrong?

²⁰ Lawrence Blum, “Moral Exemplars: Reflections on Schindler, the Trocmes, and Others,” *Midwest Studies in Philosophy* XIII: 196-221 (1988).

²¹ Blum, “Moral Exemplars,” 200-201.

I confess I am not sure how to answer this question. Because of the great risk of lying in these circumstances, lying may not be required, but it is certainly morally praiseworthy; I do not disagree with calling the lying supererogatory. If an act is deemed supererogatory, it seems thereby cleared of wrongness. Independent of the claims about supererogation, lying to the Nazis to protect innocent Jews strikes me as *in no way* wrong. Underlying my judgment in this case is the more general view that lying is not always wrong. But I do not want the answer to the question of moral purity to depend on the particulars of one's normative theory of morality. So instead suppose that I took up an absolutist view about the wrongness of lying. On this view, Schindler's lies, insofar as they were lies, were in one way wrong. Could they nonetheless be supererogatory? I believe the answer must be No. This may be a result of never having heard anyone support a view that generates a Yes answer. Perhaps it is just a fixed part of my scheme of moral concepts that supererogatory acts cannot be wrong. I admit I do not have an argument for this view.

Nonetheless, a No answer needs to be accompanied by some explanation as to how, if Schindler's lies were really wrong, they nonetheless could have *seemed* supererogatory. This explanation has two parts, and takes up the remainder of this section. First, I point out that we often notice that supererogatory acts are risky acts, but the riskiness of an act does not imply the act is supererogatory. Second, I add that we accept a kind of act—supererogatory acts that are not morally perfect—which are similar to, but importantly distinct from, supererogatory acts that are partly wrong. We should not conflate these.

On the first point, we see that Schindler lied at great risk to himself. We often think of supererogatory acts as acts in which the agent puts herself at substantial risk of great danger. Consider Wesley Autrey, the “subway superman” who leapt into the path of an oncoming subway in order to save the life of a man who fell onto the tracks during an epileptic seizure. Clearly, he acted supererogatorily, and at great risk to himself. Yet this does not show that to act at great risk to oneself is to act supererogatorily. After all, one could selfishly and foolishly act at great risk to oneself, as “BASE jumpers” do. Or one could be morally required to put oneself in a position of great risk, such as coming to the defense of your young children when they are threatened by an armed adult. Putting oneself in a position of great risk might even be mundane for the agent, in cases in which the risked harm is far off, as when one smokes, or goes to work daily in a coal mine. So, if I believe that lying is always wrong, and thus that Schindler's lies to

the Nazis were not supererogatory, I nonetheless could explain their apparent supererogatory status by showing that they have a feature—riskiness—that is common to, but conceptually distinct from, supererogation.

Second, we may be led to believe in the existence of supererogatory acts that are in some way wrong because of their similarity to another kind of act: supererogatory acts which fail to be morally perfect. For example, suppose I donate to some charity more than morality requires of me. Suppose further that I was capable of donating more, but decided not to so that I could have a delicious dinner that night. Since I gave more than I was required to, my act was supererogatory. But since I was capable of being more beneficent than I actually was, it might be thought that my act was not morally perfect. Most of us (save utilitarians) would not, as a result, say that I acted wrongly. In another example, I give out unexpected and valuable gifts to a group of people. I give more gifts to the more attractive people in the group and less to the less attractive. In benefiting these people in ways that I was not required to, and in ways in which they were not entitled, I have acted supererogatorily. However, my distribution of gifts, based as it was on the arbitrary distribution of physical beauty, did not track some ideal of fairness, and it could have, so my act is not morally perfect. Note that my failure to attain moral perfection in these cases does not mean I have acted wrongly. No one would call the acts I described wrong. Were we to believe that the qualities of my acts that made the acts morally imperfect would make them morally wrong, we would, I believe, come to reject the idea that the acts are supererogatory. So, we should not draw support for the idea that Schindler's lies were both supererogatory and wrong from the existence of other cases in which we judge supererogatory acts to fall short of moral perfection. An act's failure to be morally perfect does not imply that the act is wrong.

Some acts appear both supererogatory and in some way wrong. My argument in this section is that this combination of features in an act must be merely apparent. My comments on riskiness are meant to show that a wrong act that appears supererogatory may not be; the act may simply be risky. My comments on morally perfect acts are meant to show that a supererogatory act that appears to be wrong may not be; the act may simply be morally imperfect. With these alternative explanations for apparently supererogatory yet wrong acts, we can be more confident in rejecting the challenge to Premise 8.

§12. Specific, Not Supererogatory?

At this point one might be tempted to ask whether I too hastily dismissed the idea that the kinds of acts under discussion are not supererogatory, but required. Perhaps they are required by the specification of vague principles. For example, the government may be charged, according to one theory of justice, with promoting to some extent the welfare of its subjects. Upon further consideration and investigation the government determines that throwing a block party may be one way to do this. Another way would be to send everyone a candy bar. The government chooses the block party. In this case, when the government throws its block party, it is not doing something it is required to do, since it could have sent out candy bars instead. But neither is it going above and beyond what it is required to do. Rather, it is doing its duty, one way rather than another. Thus, throwing the block party is not a candidate supererogatory act, but a requirement specified from a vague principle. Similar lines of argument could be proposed for our other examples. Of course, we would still be left wondering whether governments can properly perform supererogatory acts. But this might be thought less pressing a question if we have no examples of such acts.

This counterargument suggests that each of our allegedly supererogatory acts is in fact required by justice. To check this, we should ask whether it would be unjust not to perform each act or any other that would satisfy its vague backing principle. That is, *would it be unjust to fail to perform the act or its functional equivalent?* As I stated before, which particular examples you find compelling will depend on which theories of justice and goodness you accept. That said, if we are leaving aside theories that conceptually leave no room for supererogation, it is hard to imagine subscribing to a theory of justice that deems unjust the failure of the government to either throw a block party or do something relevantly similar; or deems unjust the government's refusal to take action to increase property values by the amount gained by designating a neighborhood as historic; and so on.²² So the vague principles alleged to require these kinds of actions either do not really do so, or if they do, they are implausible principles of justice.

²² Note the answers are different when asking about coordinative functions such as enforcing the rule that persons drive on the right side of the road. If we accept the comments on coordination in Section 8 (above), then governments would be acting unjustly when not enforcing right-side driving *or its functional equivalent*.

§13. Procedural Justice

My argument works, to the extent that it does, by relying on a contrast between the kinds of acts I've used as examples for alleged government supererogation, and the requirements of what could be called a substantive yet hollow conception of justice. The conception of justice is substantive in the sense that it has enough content to generate a judgment that, for example, it does not require block parties. Yet it is hollow in the sense that I have left it largely up to the reader to fill it in: to specify the reasons for this judgment, and to articulate what other judgments the theory might generate. The idea is that the challenge to government supererogation should not rest on any particularly narrow substantive conception of justice.

Still, one might object that it is by employing a substantive rather than a procedural conception of justice that I am able to cause a problem for government supererogation. Once we switch to a procedural conception, it might be argued, the problem goes away. The reasoning could go as follows: we don't have to throw a block party, but if by going through just procedures (say, some kind of deliberative democracy) we enact a policy which permits our government to throw such a party, then when it does throw the party it is acting in a good way that is neither unjust nor required. The party would then be a successful example of government supererogation.

One thing to note is that most of us do not hold a purely procedural view of justice; outcomes of the procedure matter, and those outcomes will be measured against a substantive account of justice. Further, note that even supposedly pure procedural accounts of justice do not stand alone but are backed up or checked by substantive accounts. That is, they depend on prior accepted substantive accounts of people's rights and entitlements²³ or are subject to revision if the procedure yields outcomes that deviate significantly from what is thought to be acceptable.²⁴ (We would reject slavery as unjust no matter what procedure would approve of it.)

²³ See William Nelson, "The Very Idea of Pure Procedural Justice," *Ethics* 90(4): 502-511 (1980).

²⁴ Gambles based on coin flips are among the examples offered for illustrating pure procedural justice. But if someone were to become very good at gaming the procedure (by combining precision-coin-flipping talent with mind-reading) we would no longer say that these coin flips are examples of pure procedural justice. This kind of worry is often accounted for by stipulating that the coin flips be *fair*. What "fair" means in this context is that the flips be random in the sense that each participant in them has an equal opportunity of winning, which is of course a substantive account of the outcome of the procedure. Further, we would take a long run of wins by one party—that is, an outcome that diverges significantly from the expected one—as evidence that the procedure is faulty. Though Rawls describes his justice as fairness as a purely procedural account of justice, if the procedures in place failed to bring about, say, a distribution of social primary goods that was regularly to the advantage of the least well-off, then

The question, then, is whether the procedural account's approval of alleged government supererogation is compatible with whatever substantive conception of justice we are committed to. If the answer is No, then the kinds of acts I've used as examples for government supererogation would be, in some sense or another, unconstitutional, and thus wrong for the government to perform, and thus not supererogatory. If the answer is Yes, however, we have not avoided the dilemma. Rather, we have simply grasped the second horn of it: that government coercion is permitted even when it is not necessary for justice. If we embrace the second horn, we will need new and persuasive accounts of what separates justice from the rest of morality and of what, if not justice, constrains government coercion. Attempting to change the subject by appealing to procedural justice, then, does not seem to threaten the Revised Argument.

§14. A Welcome Dilemma?

In this paper I raised the question of the possibility of government supererogation. I discussed and clarified an argument against that possibility, and showed that this argument leads to a dilemma. On one horn of the dilemma, we accept the argument. According to this argument, acts of apparent government supererogation are actually wrong. On the other horn, we reject the argument. However, the least implausible ways of doing this face problems. First, if government attempts to perform the acts without coercion, the acts may retain their supererogatory status, but it is not clear how government could achieve the needed compliance for the acts to succeed. Second, we could reject the idea that government is a perpetual JBA; but if we do that, we abandon the widely held view that the formal content of political justice is the grounds for legitimate government coercion.

What should we make of this dilemma? In an attempt to begin with noncontroversial material, I mentioned only three examples of government supererogation. Yet each of us probably has a much longer list of the kinds of government actions that we think of as good but not required by justice, actions whose legitimacy is threatened by the dilemma. This is worrying, but it is not the entire story, for there are reasons one might appreciate, rather than worry about, the dilemma. Here are two.

it seems Rawls would call for alternative procedures. That is, justice as fairness is best characterized as a version of imperfect procedural justice, not pure procedural justice.

For criticisms of procedural justifications of democracy, see David Estlund, *Democratic Authority* (Princeton, NJ: Princeton University Press, 2008).

The first horn of the dilemma echoes a claim that can be advanced in a number of ways. That claim is that we cannot get everything we want, in terms of social cooperation and organization, from government. We accept this claim in many contexts, including economic activity, psychological development, and the encouragement of virtue, civic and otherwise. We may find the first horn of the dilemma more palatable by seeing its similarity to judgments about these other areas.

The second horn of the dilemma chips away at the conceptual relationship long alleged between justice and coercion, advancing the idea that it is a mistake to conceive of the point of theories of justice as setting out the proper limits of government coercion. While this horn relies on the concern about legitimizing coercion without justice, it may nonetheless draw our attention to the somewhat different but appealing idea of justice without coercion. This idea has failed to get the attention it deserves, but that is a topic for another day.²⁵

Note that if our theory of justice is consequentialist, government supererogation faces a different dilemma. If the apparently supererogatory acts maximize the good, then they are not supererogatory; rather, they are required. Yet earlier we noted the implausibility of thinking that, say, celebrations are required by justice. If, on the other hand, the acts don't maximize the good, they are wrong. But of course that doesn't fit with the general attitude of approval towards these acts.

In the end, it may be unsurprising to hear an argument that governments are doing things that are not justified, or could only be justified with a radical revision of what constitutes justification. After all, we hear about things that fit that description nearly every day: government corruption, the abuse of power, wars of aggression, cronyism, and so on. What *is* surprising, though, is that such a description could apply to government activities many of us think are good.

²⁵ G.A. Cohen's argument for an "egalitarian ethos" would fit with this idea. See *If You're an Egalitarian, How Come You're So Rich?* (Cambridge, MA: Harvard University Press, 2000).